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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 353

KOHLER CO., *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

and

LOCAL 833, UAW-AFL-CIO INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *Respondents*

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EUGENE ADAMS KEENEY
United States Chamber of Commerce
1615 H St., N. W.
Washington, D. C.

GUY FARMER
JOHN A. MCGUINN
Patterson, Belknap & Farmer
1120 Connecticut Ave., N. W.
Washington 36, D. C.

Attorneys for the Amicus Curiae

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BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The United States Chamber of Commerce supports the Petition for Certiorari filed by the Kohler Company because of the widespread, adverse potential impact of the decision of the Board and Court below on peaceful labor relations throughout industry.[1] The

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[1] On only one other occasion (*International Ass'n. of Machinists v. Street*, 367 U.S. 740) has the U.S. Chamber of Commerce filed a brief in support of a party's petition for a writ of certiorari.

decision below rewards strikers for engaging in violent and coercive misconduct proscribed by the Act and found to be in violation of the validly imposed law of the State of Wisconsin and thus forecasts a reversion to jungle warfare as opposed to the rule of law in labor disputes.

The Kohler labor dispute and the ensuing litigation before the Board has had a long and highly publicized history. The bitterness and widespread publicity attending this particular labor dispute, however, should not be allowed to obscure the significance and importance of the unprecedented holding by the Board and the Court below in the administration of Federal labor policy.

The Board and Court below have by their holdings given affirmative condonation and encouragement to coercive and unlawful conduct on the part of strikers. This conduct is precisely the type which has since *Fansteel*[2] (twenty-seven years ago) been condemned by this Court, and since 1947 specifically prohibited by the National Labor Relations Act.

This ruling, if allowed to stand, will tend to erode the basic policy of the Labor Act, which is to encourage the use of peaceful procedures in settling disputes, as opposed to resort to violence and coercion. It will add fuel to the fires of industrial strife in contravention of our national labor policy as enacted by Congress and construed by this Court.

Stated in other terms, the decision below represents an attempt to reinstate a rule of lawlessness for strikers in labor disputes first advanced by the Board

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[2] *Labor Board* v. *Fansteel Metallurgical Corp.*, 306 U.S. 240.

amidst the labor turmoil of the 1930's in *Fansteel*, when the Board ordered the reinstatement of "sit down" strikers, an order which this Court struck down as directly contravening legislative policy. Since then, Congress in later basic amendments to the Labor Act has reaffirmed and strengthened this legislative policy by specifically prohibiting this type of misconduct by strikers and by expressly forbidding the Board from ordering persons reinstated with back pay who are discharged "for cause".

This Court has in a variety of contexts over this span of time given its decisional imprimatur to peaceful and orderly processes for the conduct and settlement of labor disputes.[3]

The decision below significantly undermines in an important area — the strike and picket line — this salutary legislative and judicial policy.

THE QUESTIONS FOR CERTIORARI

The Kohler petition presents two questions on which certiorari is sought. The Chamber of Commerce supports the request for a review of both questions.

They are, indeed, interrelated and perhaps inseparable. The questions are accurately framed in the Kohler petition and need not be repeated *in haec verba* here. They may be briefly paraphrased as follows:

1. The first question is whether the Board was authorized to order reinstatement and back wages for strikers who *were found* to have engaged in

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[3] *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448; *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574; *Fibreboard Paper Prods.* v. *Labor Board*, 379 U.S. 203; *Carey* v. *Westinghouse Elec. Corp.*, 375 U.S. 261.

violent and coercive conduct proscribed by the Act.

2. The second and related question is whether the Court of Appeals did not exceed its reviewing power by remanding the case to the Board with directions to reweigh the evidence, after refusing to enforce the original Board decision on the stated ground that the Board had "improperly ignored inferences to be drawn from the record", when in fact the Board had weighed the particular evidence to which the Court referred and found it insufficient to overcome the undisputed evidence upon which the Board based its conclusions.

The reason these questions are interrelated is that the Board in the first instance had refused to reinstate the seventy-seven strikers who had been found guilty of misconduct during the strike. This was in accord with the uniform rule since *Fansteel*. The Court below, however, relying solely on some ill-defined dictum in the *Thayer*[4] case in another Court, said that the Board should have "balanced" the wrongdoing of the strikers against the unfair labor practices of the Kohler Company as the determinant for granting or denying reinstatement and back pay. The Court below also found that the Board had "improperly ignored inferences to be drawn" from certain evidence, referring to background evidence of Kohler's pre-1953 labor history and alleged resistance to outside unionism. The Board had reviewed this background and concluded that it was "amply refuted" by the undisputed facts concerning the negotiations and the results of collective bargaining during 1952 and 1953. The Court would not accept this finding, although not holding

[4] *NLRB* v. *Thayer Co.*, 213 F. 2d 748 (1st Cir. 1954), cert. denied, 348 U.S. 883.

that there was a lack of substantial evidence to support it (which is the statutory test for a reviewing Court).

Thus, the Court below remanded to the Board, not merely for the purpose of "balancing" striker misconduct against unfair labor practices, but also to redetermine the date when the unfair labor practices (a refusal to bargain violation) first occurred.

The significance of this is that the Board had originally found that Kohler's violation of the bargaining obligation first occurred on June 1, 1954 (when a unilateral wage increase was found to have been given), and the Court obviously thought that the bargaining violation began at an earlier date. Since most of the strikers' misconduct had occurred prior to June 1, a moving back of the critical date was necessary in order to establish a factual predicate for striking a "balance" as the Court directed.[5]

The second Board (with one member dissenting) reweighed the evidence, and found a refusal to bargain antedating the beginning of the strike, which occurred on April 5, 1954, thus denominating it an unfair labor practice strike from its inception. Having established an employer violation as a predicate, the Board then struck a balance in favor of fifty-seven of the seventy-seven strikers who had individually been found to have engaged in misconduct and had been discharged for that reason. The Board struck a different balance for seventeen of the strikers whose misconduct it felt was

[5] It must be noted that under established law, unfair labor practice strikers have heretofore been held to forfeit their right to reinstatement, as do economic strikers, if they engage in picket line violence or other coercive conduct.

the most flagrant of the group, and sustained their discharge.[6]

When the case was returned to the Court below, the Board decision was affirmed in a *per curiam* opinion.

Even this brief review of the proceedings below is sufficient to demonstrate the importance and the interrelationship of the two questions presented by the Kohler Petition. It was the overreaching of the Court below and its departure from the standards of review that led the Board into its adoption of an unsound principle in direct contravention of a rule of law established by this Court in *Fansteel,* and thereafter followed by the Board and the Courts of Appeals for 27 years.

While the Board's findings were made pursuant to remand, the *Kohler* decision clearly portends a rule of general application in all cases involving unfair labor practice strikers, for in each of them there will exist the elements for "balancing" employer bargaining violations on an imprecise scale against striker misconduct. The decision, therefore, has a potential impact on every bargaining relationship that exists today and on every labor dispute arising therefrom.

The principle applied by the Board and the Court below thus poses a direct threat to the maintenance of

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[6] Since the judgment appeared to be a purely subjective one, it is difficult to say just where the line was or is to be drawn. In a later case, a Trial Examiner of the Board, with Board approval, has expressed it this way:

> "While the net result of this may be that anything short of aggravated assault will not disqualify such a striker, this policy is deemed binding upon the undersigned". *Oneita Knitting Mills, Inc.,* 153 N.L.R.B. No. 4 (1965).

labor peace throughout industry. It is therefore urged that the Court review the questions presented by the Kohler petition.

ARGUMENT

The Misconduct Which the Board Found But Rewarded Was in Violation of the Act and the Law of the State of Wisconsin

The misconduct engaged in by the fifty-seven strikers ordered reinstated with back pay was concerted, organized and flagrant. Indeed, it was extreme and essentially terroristic. It was directed at nonstrikers, their homes and their families. It was not casual or the result of isolated picket line incidents. Its calculated purpose was to intimidate nonstrikers and prevent them from exercising their Section 7[7] rights to refrain from striking and continue to work at their jobs at the Kohler plant.

The fifty-seven employees ordered reinstated with back pay by the Board were each found to have engaged in some phase of this coercive conduct against nonstrikers. This was not a blanket finding against all strikers and pickets, since there were hundreds involved, but was based on actual proof of individual wrongdoing, consisting of leadership and/or participation in coercive activities.

The conduct in which the fifty-seven strikers engaged falls in one or more of the following categories.

1. Participation in mass picketing by up to 2,500 pickets which shut the Kohler plant "Down like a

[7] Under Section 7 of the Labor Act, the right of employees to refrain from strike activities stands on an equal footing with the right to engage in such strikes.

Drum" for all but three days from April 5 until May 28, 1954. An advance guard of pickets was established to meet nonstrikers and physically block, push, shove and prevent them from entering the plant. Police authority was flaunted and "belly to back" lines were formed to prevent entrance to the plant. Epithets were shouted by the pickets at nonstrikers.

2. Blocking of access to the Kohler employment office, and many instances of large groups of pickets blocking, pushing, shoving, bumping, spitting upon, tripping and punching persons attempting to enter the employment office.

3. Mounting massive and hostile demonstrations in front of the private homes of nonstriking employees. These demonstrations were participated in by from 400 to 700 strikers at a time, and, as described by the Trial Examiner and found by the Board, "they became disgraceful spectacles of mob proportions", characterized by calling nonstrikers vile names, and the hurling of insulting, derisive and threatening epithets.

4. Direction and control of the above stated illegal activities by the union's strike committee.

It is difficult to conceive of more threatening, more coercive, or more flagrant misconduct on the part of strikers and their leaders. It is this type of conduct that the Board and the Courts since *Fansteel* have found disqualify strikers from reinstatement and justify their discharge for cause. Yet it was this conduct which the Board rewarded with a remedial order calling for their reinstatement with back pay, no doubt replacing some of the same employees whose own statutory rights the strikers had threatened and infringed by their terroristic activities.

This is, indeed, the same misconduct by the same strikers that this Court found in *U.A.W.* v. *Wisconsin Employment Relations Board,* 351 U.S. 266, 275, was "violent union conduct", subject to restraint and punishment by the State of Wisconsin and also found to be clearly in violation of the National Labor Relations Act. In its decision relating to this strike, the Court also said:

> "The Kohler Company is subject to the National Labor Relations Act. It seems agreed, and we think correctly in view of the findings of fact, that the alleged conduct of the union in coercing employees in the exercise of their rights is a violation of Section 8(b)(1) of the Act". (Referring to the National Labor Relations Act). 351 U.S. at 270.

The ostensible legal justification for the unprecedented order rewarding these strikers is the resurrection of a presumed rule of balancing the wrongdoing of the strikers against the unfair labor practices of the employer, which has been discredited since the decision of this Court in *Fansteel.*

Practical Significance and Extent of the Board's Action in Rewarding Strikers Who Engage in Coercive Activities

Reinstatement with back pay does not merely condone coercive conduct. It constitutes a direct inducement to such activity on the part of strikers. Every labor dispute, such as this one, involves a potential strike and a potential charge that the strike was caused by unfair labor practices.[8] Since there are thousands

[8] In fiscal 1964 some 10,695 charges were filed with the Board alleging employer unfair labor practices. Twenty-Ninth Annual Report of the National Labor Relations Board (1964), p. 7.

of labor contracts negotiated throughout industry generally each year, there will be countless disputes in which the ruling of the Board and the Court below will have a potential application.

It is an increasingly common practice for unions to file unfair labor practice charges when a bargaining impasse arises, sometimes because they believe they have merit and sometimes for strategic reasons.[9] In the subjective view of the strikers, these charges always have merit. If the Board decides that they have merit, and if the Board, in its subjective analysis after the fact, decides that the employer's wrongdoing overbalances the wrongdoing of the strikers, the strikers will win reinstatement with back pay. The application of such a primitive rule of "an eye for an eye and a tooth for a tooth" can only serve to increase the tensions in labor disputes and encourage resort to force and violence on the picket line.

The "weighing" process implicit in this ruling itself is totally impractical to administer on any basis having a semblance of objectivity. The repeated use of the adjectives "flagrant" and "deliberate" by the Board in describing its apparently personal reaction to Kohler's labor relations policy over the past thirty-five years is an indication of the total subjectivity as well as the lack of any tangible guidelines in the Board's ruling. As demonstrated so poignantly in this case, the same facts that were regarded by the second

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[9] In its 1964 Annual Report the Board stated:

"A considerable increase also was noted in refusal-to-bargain charges against employers in 1964. There were 3,088 such allegations, 504 more than the 2,584 of 1963, or in excess of 19 percent above the prior year". Twenty-Ninth Annual Report of the National Labor Relations Board (1964), p. 8.

Board as constituting a flagrant and deliberate unfair labor practice causing a strike and excusing coercive and unlawful conduct by strikers were regarded by the first Board as not even sufficient to establish *any* employer unfair labor practice prior to the strike.[10]

The "rule" thus fashioned is not a rule at all. It evokes merely the emotional reaction of a particular Board in balancing wrongdoing to determine whether the wrongs of one party are sufficiently serious to warrant rewarding the wrongs of the other party. Under such a rule, it would be equally logical, and equally destructive of the purposes of the Act to strike a different balance and hold that the flagrant conduct of the Union and the strikers in this case outweighed Kohler's alleged unfair labor practices, a rule which would presumably relieve Kohler of its obligation to bargain. The Board has no right to view its discretion so broadly as to enforce the law as between two wrongdoers on a "winner take all" basis.

The Decision of the Board and Court Below Contravenes the Settled Law of This Court on an Important Issue in the Administration of the Act

The result of the litigation below constitutes the first administrative and judicial finding (since the original erroneous finding of the Board struck down by the Court in *Fansteel*) that strikers who engage in

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[10] The original Board decision found that the strike commencing on April 5, 1954, was an economic strike at its inception and was converted to an unfair labor practice strike only on June 1, 1954, thus negating the "flagrant" and "deliberate" gloss put on Kohler's conduct by the Board in its Supplemental Decision, where the same facts were found to have resulted in an unfair labor practice strike on April 5, 1954. Indeed, dissenting Judge Miller would have found that the strike was economic in its inception and never became an unfair labor practice strike.

coercive conduct in violation of the Act can be rewarded with reinstatement and back pay.

Since *Fansteel,* and prior to this case, the uniform Board and Court interpretation has been that strikers who engage in coercive conduct in violation of the labor statute forfeit their right to reinstatement, and this rule has applied equally to economic and unfair labor practice strikes, i.e., strikes caused by employer unfair labor practices. Never before has it been held that antecedent or concurrent employer unfair labor practices serve to exonerate strikers from the consequences of their own coercive conduct.

The important issue posed is one practically as old as the National Labor Relations Act itself and definitely settled by this Court in 1938 in *Fansteel.* There the Board found, with this Court's approval, that the employer was guilty of introducing a company-dominated union to defeat a labor organization, had engaged in unlawful surveillance by use of a "labor spy" and had absolutely refused to meet and bargain with the Union. The Board, however, had also found that strikers discharged for a subsequent "sit down strike" and other activities in support of the sit down strike, which were found to violate the validly imposed law of the State of Illinois, should be reinstated with back wages. The Board in that case had held:

> "It is contended that the conduct of the strikers in engaging in the sit-down strike and in refusing to vacate the buildings in response to the injunction, relieves the respondent of any obligation toward the participants, including those who brought supplies to the men in the plant. In making this contention, however, the respondent does not come before the Board with clean hands. On the contrary, as we have found above, the

> respondent is guilty of gross violations of law, violations which in fact were the moving cause for the conduct of the employees". *Fansteel Metallurgical Corp.*, 5 N.L.R.B. 930, 949.

It was this strikingly parallel reasoning that this Court expressly disavowed in the *Fansteel* case, stating:

> "To justify such conduct because of the existence of a labor dispute or of an unfair labor practice would be to put a premium on resort to force instead of legal remedies and to subvert the principles of law and order which lie at the foundations of society". 306 U.S. at 253.

The Court thus held:

> "We are of the opinion that to provide for the reinstatement or reemployment of employees guilty of the acts which the Board finds to have been committed in this instance would not only not effectuate any policy of the Act but would directly tend to make abortive its plan for peaceable procedure". 306 U.S. at 258.

The Court also stated that to hold that the misconduct violated validly imposed State law, but deny the employer the right to discharge for such misconduct "would be to create an anomolous distinction for which there is no warrant . . .". 306 U.S. at 254.

No valid distinction can be drawn between the striker misconduct involved in the *Fansteel* case and the striker misconduct in the present case. In both cases the misconduct was found to be in violation of valid State law and was enjoined and punished under such law. That the coercive and violent misconduct of the strikers in the present case was directed more

against fellow employees and their families rather than the property rights of the employer only magnifies the enormity of the Board's error and demonstrates the importance and broad impact of the case on employers and employees alike.

The *Fansteel* rule has been consistently followed by every Court of Appeals before which this issue has been raised, with the exception of the present case, to bar reinstatement with back pay of strikers who engage in coercive, illegal or unprotected conduct during the course of an unfair labor practice strike.[11]

The So-Called "Thayer Doctrine" Is Inapposite

The Court below first suggested and the Board then sought to justify its reinstatement and back pay order by reference to the so-called "*Thayer* doctrine".

In judging the relevance of *Thayer* to this case it is significant that in the *Thayer* case both the Court and the Board were careful not to infringe upon this Court's ruling in the *Fansteel* case. The Court in *Thayer* merely laid down the abstract rule that:

> "where collective action is precipitated by an unfair labor practice, a finding that that action is not protected under § 7 does not, *ipso facto,* preclude an order reinstating employees who have been discharged because of their participation in the unprotected activity". 213 F. 2d at 753.

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[11] *NLRB* v. *Clearfield Cheese Co.,* 213 F. 2d 70 (3d Cir. 1954) (mass picketing); *NLRB* v. *Longview Furniture Co.,* 206 F. 2d 274 (4th Cir. 1953) (concerted use of profane and indecent language to prevent nonstrikers from working); *W. T. Rawleigh Co.* v. *NLRB,* 190 F. 2d 832 (7th Cir. 1951) ("breast to back" mass picketing).

The present case does not involve the validity or invalidity of this broad, negatively stated dictum.[12]

In contrast to striker conduct that was peaceful although unprotected in *Thayer*, what is involved here is *violent and coercive* conduct and the issue is whether the Board may reward violent and unlawful conduct with reinstatement and back pay. That is a *Fansteel* not a *Thayer* question.[13]

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[12] It is worthy of note, moreover, that on the remand of Thayer the Board refused to reinstate strikers who had engaged in conduct described by the Board as "visits by carloads of strikers to the homes of nonstrikers . . .". *H. N. Thayer Co.*, 115 N.L.R.B. 1591, 1593 (1955). Both the Board and the Court in Thayer found such conduct to be "coercive in nature and calculated to instill fear of physical harm in the non-striker victims". 213 F. 2d at 757, 115 N.L.R.B. at 1593.

[13] Prior to this case, the Board had, itself, given only a narrow and limited scope to Thayer. Thus, in its 1964 Annual Report the Board reported, under a section discussing decisions which "involved novel questions and set precedents", its *Blades Mfg. Corp.* decision, 144 N.L.R.B. 561 (1963). The Board stated:

> "The Board held that under the circumstances it would apply *Thayer* even assuming the dischargees had engaged in a planned series of work stoppages involving partial or intermittent strike activity which was unprotected. However, the conduct of the employer was found to be in flagrant disregard of the employees' rights and of the rights of the union as their exclusive bargaining representative. In contrast the strike activity of the dischargees was *peaceful, not in violation of the law*, and there was no showing that the dischargees' activity caused any greater damage to the employer's business than a concededly protected strike would have". Twenty-Ninth Ann. Report of the NLRB, p. 102. (Emphasis added).

Ironically, *Blades* was reversed by the Court of Appeals for the Eighth Circuit on the ground that there was no substantial evidence to support the Board's finding of an employer unfair labor practice, "flagrant" or otherwise. *NLRB* v. *Blades Mfg. Corp.*, 344 F. 2d 998 (8th Cir. 1965).

An Order Reinstating Strikers Discharged for Violent and Coercive Activities Contravenes the Purposes of the Act

As was true in *Fansteel,*[14] the major justification of the Board and the Court below in ordering reinstatement with back pay for employees discharged for violent and coercive conduct is that such remedial order is necessary to "effectuate the policies of the Act".[15]

This is a transparent makeweight argument. For thirty years, the Board and the Courts have regarded a Court enforced order to bargain as an adequate and appropriate remedy for a violation of the bargaining obligation. Such an order was entered and enforced against Kohler in this case. In addition, all strikers, except for the seventy-seven engaging in unlawful conduct, have been ordered reinstated, thus preserving the Union's membership virtually intact. The argument can hardly be made that the discharges of the seventy-seven employees involved in violent and coercive conduct tends to weaken or destroy the Union. In fact, the purging from the Union of its lawless elements would appear to strengthen it as an instrument of employee representation. There is, thus, no necessity to reinstate these employees in order to prevent Kohler from "benefiting" from its unfair labor practices.

As this Court said in *Fansteel*:

> "The authority to require affirmative action to 'effectuate the policies' of the Act is broad but not

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[14] The Court in Fansteel stated:

> "The contentions of the Board in substance are these: . . .
>
> "(3) That the Board was entitled to order reinstatement or reemployment in order to 'effectuate the policies' of the Act". 306 U.S. at 252-253.

[15] Supp. J. A., pp. 2322, 2366.

> unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes. . . . [T]he authority to order affirmative action [does] not go so far as to confer a punitive jurisdiction enabling the Board to inflict on the employer any penalty it may choose because he is engaged in unfair labor pactices, even though the Board is of the opinion that the policies of the Act may be effectuated by such an order". 306 U.S. 257.[16]

No argument is made or can be made that the activities for which these persons were discharged were protected activities within the meaning of Section 7 of the Act. Yet, it is elementary that the reinstatement with back pay order of the Board protects only persons who have been unlawfully deprived of rights guaranteed by Section 7 of the Act.

Moreover, the Board's remedial order in this case directly contravenes the following stated affirmative policies of the Act which emphasize resort to peaceful procedures and conduct in the course of a labor dispute.

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[16] This Court in *American Ship Building Co.* v. *NLRB*, 380 U.S. 300 has recently reiterated its criticism of the Board for seeking to define national labor relations policy in terms of its own assessment of the relative economic power of the adversaries in the bargaining process rather than following the Congressional mandate. There this Court said:

> "[W]e think the Board construes its functions too expansively when it claims general authority to define national labor policy by balancing the competing interests of labor and management". 380 U.S. at 316.

Certainly the "balancing" of wrongdoing ordered by the Court below and indulged in by the Board is precisely the type of overly expansive construction of the Board's functions condemned by this Court.

1. The policy to avoid "industrial strife" through all parties' recognition "under law" of the legitimate rights of other parties and the policy of providing "orderly and peaceful procedures" to insure and protect such legitimate rights. (Section 1(a) of the Act).
2. The protected right of employees "to refrain from" engaging in concerted activities, such as striking and picketing. (Section 7 of the Act).
3. The proscription against unions from restraining or coercing employees in the exercise of their legitimate rights guaranteed by Section 7. (Section 8(b)(1)(A) of the Act).

As stated by this Court in *Fansteel*:

> "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the purpose of the Act is to promote peaceful settlements of disputes by providing legal remedies for the invasion of the employees' rights". 306 U.S. at 257-258.

An Order Requiring Reinstatement With Back Pay for Strikers Discharged for Violent and Coercive Misconduct Violates Section 10(c) of the Act

The fifty-seven strikers ordered reinstated with back pay by the Board and Court below were discharged for their individually proven leadership or participation in coercive activities, and the first Board found that Kohler had sufficient cause to discharge them. The Board, having made this finding, was precluded by express statutory proscription from ordering their reinstatement.

Congress in 1947 amended the Act to provide:

> "No order of the Board shall require the reinstatement of any individual as an employee who has

> been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause". (Section 10(c)).

That amendment to the Act placed an added restriction on the Board in its framing of remedial orders and constituted a legislative affirmation of the principle of the *Fansteel* case.

It is, therefore, unprecedented that the Court below should hold in its first opinion in this case that:

> "[W]e cannot say that § 10(c) would prevent the Board from ordering reinstatement if it were to find that to do so would effectuate the policies of the Act". 300 F. 2d at 705.

This holding ignores Congressional policy stated in Section 10(c) and conflicts with the heretofore uniform rulings of this Court and all federal courts that organized violent and coercive misconduct of the strikers, directed largely against defenseless employees and their families, may not be rewarded with reinstatement and back pay.

CONCLUSION

For the reasons specified above the Chamber of Commerce urges this Court to grant the petition for certiorari to consider the questions presented by Petitioner, which have a transcendent importance to American industry and will determine whether labor relations in this country will be permitted to revert to a primitive and by-gone era of violence and coercion or will be found to have entered that era of maturity envisaged by the Act wherein:

> "employers, employees, and labor organizations each recognize under law one another's legitimate

rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest". (Section 1(a) of the Act).

Respectfully submitted,

EUGENE ADAMS KEENEY
United States Chamber of Commerce
1615 H Street, N. W.
Washington 5, D. C.

GUY FARMER
JOHN A. MCGUINN
Patterson, Belknap & Farmer
1120 Connecticut Avenue, N. W.
Washington 36, D. C.

Attorneys for the Amicus Curiae